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7 NOT FOR CITATION
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
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12 NATHANIEL BASOLA SOBAYO, et al.,
13 Plaintiffs,
14 v.
15 WASHINGTON MUTUAL BANK, et al.,
16 Defendants.
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Case Number C 06-2348 JF (RS)

ORDER¹ GRANTING DEFENDANTS'
MOTIONS TO DISMISS WITH
LEAVE TO AMEND; AND
GRANTING DEFENDANT GAINES'
MOTION TO EXPUNGE *LIS*
PENDENS

[re doc. nos. 6, 8 and 9]

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19 Before the Court are: (1) a motion to dismiss brought by Defendant Washington Mutual
20 Bank ("WaMu"); (2) a motion to dismiss brought by Defendants Sean Buckley and Buckley Real
21 Estate, Inc. (collectively "Buckley"); and a motion to dismiss and to expunge *lis pendens* brought
22 by Defendant Dodie Gaines ("Gaines"). Plaintiffs appeared at the hearing and filed a motion for
23 a continuance of 120 days to seek legal counsel. The Court has considered Defendants' briefing
24 as well as the oral arguments presented by defense counsel on July 28, 2006. For the reasons
25 discussed below, the motions to dismiss will be granted with leave to amend and the motion to
26 expunge *lis pendens* will be granted.
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28 ¹ This disposition is not designated for publication and may not be cited.

I. BACKGROUND

Plaintiffs Nathaniel Basola Sobayo (“Sobayo”), Christopher Franz Wullemin (“Wullemin”) and Waltraud Wullemin (“Waltraud”), proceeding *pro se*, filed the complaint in this action on April 4, 2006.² The complaint is twenty-one pages long³ and appears to be a compilation of several different documents, including documents filed in related state court and bankruptcy proceedings. The Court has read the complaint carefully, but cannot discern the factual or legal basis of Plaintiffs’ claims. Based upon the motions filed by Defendants and the documents of which Defendants request judicial notice, the Court infers that this action arises out of foreclosure on a piece of real property located in Little River, California (“the Little River property”).

The Court gathers that Wullemin acquired the Little River property in 1996 and thereafter encumbered it with a number of loans, including a first deed of trust held by WaMu and a second mortgage held by Buckley. Wullemin filed a chapter 11 bankruptcy petition in May 2004. He may or may not have deeded the Little River property to Sobayo shortly before filing the chapter 11 petition. Waltraud is Wullemin’s mother, who may or may not have held an interest in the Little River property.

Wullemin’s bankruptcy was converted to chapter 7 in October 2004. John Richardson was appointed as the chapter 7 trustee (“the Trustee”) and apparently was vested with title to the Little River property. Plaintiffs allege that the Trustee entered into some type of compromise agreement under which the Trustee would deed the Little River property back to Wullemin and compromise certain claims between the Trustee and Sobayo, a creditor of the estate. It is unclear whether this compromise agreement actually was executed or approved by the bankruptcy court. It appears that the bankruptcy court entered an order in October 2005 allowing Buckley to foreclose upon its interest in the Little River property. Buckley did foreclose and in January

² The Court notes that the complaint designates Sobayo as “Attorney-In-Fact” for Wullemin and Waltraud. It does not appear that Sobayo is admitted to the practice of law in California. Accordingly, he cannot represent anyone other than himself in this lawsuit.

³ The pages are not numbered.

1 violated the FCRA. Plaintiffs allege generally that Defendants' conduct violated a number of
2 state statutes, but do not specify which statutes, alleging only that the relevant statutes "ARE
3 YET TO BE RESEARCHED AND SITED [sic] BY AMENDMENTS NOW AND HITHERTO
4 PRE-REQUESTED, BY PLAINTIFFS." Compl. ¶ 22. Plaintiffs also state a number of times in
5 the complaint that they wish to time to attempt to hire "COMPETENT ATTORNEYS AND OR
6 LAW FIRMS TO OVER SEE THIS CASE, BECAUSE OF THE COMPLEXITIES INVOLVED
7 IN THIS SAME CASE." *Id.* at ¶ 9.

8 Plaintiffs' motion for a continuance, which was not presented until just before the
9 hearing, is without merit. Despite being asked to do so by the Court, Plaintiffs offered no
10 explanation as to why they could file a twenty-one page civil complaint without an attorney, but
11 nonetheless require an attorney to file opposition to dismiss that same complaint.

12 Based upon the vague and confusing nature of Plaintiffs' allegations, the Court will
13 dismiss the complaint with leave to amend. The Court notes that Plaintiffs' claims – whatever
14 their nature – may well be barred under the doctrines of *res judicata* and collateral estoppel,
15 because it appears that any claims arising out of the foreclosure sale were or could have been
16 raised in the bankruptcy action or the state court action. Under the doctrine of *res judicata*, a
17 valid final judgment on the merits of an action bars the parties or their privies from later asserting
18 claims that were or could have been raised in the earlier action. *Riven v. Regions Bank of*
19 *Louisiana*, 522 U.S. 470, 476 (1998). The phrase "were or could have been raised" refers to
20 "legal theories arising out of the same transactional nucleus of facts, rather than to distinct causes
21 of action." *Hells Canyon Preservation Council v. United States Forest Service*, 403 F.3d 683,
22 686 n.2 (2005). The Ninth Circuit has made clear that the doctrine does not go so far as to bar
23 any claims that could have been joined in the original action, but only those claims arising out of
24 the same facts that were litigated in the original action. *Id.* Under the doctrine of collateral
25 estoppel, sometimes referred to as issue preclusion, a valid final judgment binds the parties in a
26 subsequent action, whether on the same or a different claim, with respect to any issue that
27 actually was litigated and decided in the earlier action. *Baker v. General Motors Corp.*, 522 U.S.
28 222, 233 n.5 (1998).

1 The Court has serious doubts as to whether Plaintiffs can overcome these and other
2 deficiencies in their complaint. However, in light of the liberal pleading standards applicable to
3 *pro se* litigants, the Court will afford Plaintiffs an opportunity to amend their complaint before
4 considering whether dismissal without leave to amend is appropriate.

5 The Court will grant Gaines' motion to expunge the *lis pendens*. A *lis pendens* gives
6 potential purchasers constructive notice of pending litigation, ensuring that anyone who acquires
7 an interest in the property takes subject to any judgment rendered in the litigation. *Orange*
8 *County v. Hongkong And Shanghai Banking Corp. Ltd.*, 52 F.3d 821, 825 (9th Cir. 1995). This
9 Court applies the California *lis pendens* statutes when analyzing Gaines' motion to expunge. *See*
10 *id.* at 823-24. Under those statutes, "[a]t any time after notice of pendency of action has been
11 recorded, any party, or any nonparty with an interest in the real property affected thereby, may
12 apply to the court in which the action is pending to expunge the notice." Cal. Civ. Proc. Code §
13 405.30. The Court shall order the *lis pendens* expunged "if the court finds that the pleading on
14 which the notice is based does not contain a real property claim," Cal. Civ. Proc. Code § 405.31,
15 or "if the court finds that the claimant has not established by a preponderance of the evidence the
16 probable validity of the real property claim," Cal. Civ. Proc. Code § 405.32. The claimant has
17 the burden of proof under §§ 405.31 and 405.32.

18 As is discussed above, the facts supporting Plaintiffs' claims are entirely unclear, and
19 Plaintiffs did not file written opposition to Gaines' motion to expunge. Accordingly, the Court
20 concludes that Plaintiffs have failed to meet their burden of establishing that their complaint
21 contains a real property claim and the probable validity of such claim.

22 Gaines additionally assert that he was not properly served with the *lis pendens* as required
23 by California Civil Procedure Code § 405.22. Gains Decl. ¶ 5. A *lis pendens* is void as to any
24 adverse party or owner of record unless the notice requirements of § 405.22 are met.
25 Accordingly, Gaines' uncontested statement that he was not served with the *lis pendens* as
26 required by statute provides an additional basis for granting his motion to expunge.

IV. ORDER

- (1) Defendants' motions to dismiss are GRANTED WITH LEAVE TO AMEND; any amended complaint shall be filed and served on or before August 31, 2006; and
- (2) Defendant Gaines' motion to expunge *lis pendens* is GRANTED; the *lis pendens* is HEREBY EXPUNGED.

DATED: 7/28/06


JEREMY FOGEL
United States District Judge

1 A copy of this Order was served on the following persons:

2 Plaintiffs pro se:

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4 Christopher Franz Wullemin
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